

REMARKS

The Examiner required restriction of one of the following inventions under 35 U.S.C. 121:

- I. Claims 1-22, the post leveling assembly, classified in class 52, subclass 720.1; and
- II. Claims 23-25, drawn to the method of installing a vertical post, classified in class 52, subclass 741.1.

Applicant affirms the election of Group I, namely the invention covered by Claims 1-22. Applicant confirms the withdrawal of claims 23-25 from further consideration by the Examiner. Applicant further advises that there has been no change in inventorship in response to the withdrawal of claims 23-25.

The Examiner rejected claims 1 and 7-8 under 35 U.S.C. 102(b) as being anticipated by Wilson (5,456,014). The Examiner stated that Wilson discloses a leveling assembly which may be employed with a post. In response, Applicant disagrees with the Examiner's position that independent Claim 1 is anticipated by Wilson. As was stated in *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added):

Anticipation requires the presence in a single prior art reference disclosure of **each and every element of the claimed invention, arranged as in the claim.**

The Examiner stated that Wilson discloses a base 12 with an arm 16 pivotally mounted

to the base 12, the arm 16 including an indicator 14 and a marker 22 disposed on the base 12. Claim 1 of the instant application includes the limitation that the indicator be on the arm. Referring to Wilson, this would require that the indicator 14 be on the arm 16 (the components being defined numerically by the Examiner). Referring to column 7, line 7, line 7 of Wilson, it can be seen that the patent discloses and claims that the horizontal level indicating means (i.e. 14) is “affixed to the upper housing” (which is an extension of arm 16). Wilson therefore meets this limitation of the claim. However, Claim 1 of the instant application further includes the limitation that the marker be disposed on the base. This would require that Wilson’s marker 22/18RR be disposed on the base 12. However, the Applicant respectfully submits that this latter limitation is not disclosed nor claimed by Wilson, because the patent clearly discloses and claims in column 8, lines 1-2, that the **four mechanical measuring indicating means** (i.e. the marker 22/18RR) is “**affixed to the upper housing**” (which is an extension of arm 16). Wilson therefore does not meet this limitation of the claim and therefore the claim is not anticipated.

Claim 1 of the instant application further requires that the indicator (on the arm) align with the marker (on the base) to show when the post is vertical. The Examiner stated in the office action that alignment of the indicator 14 with the marker 22/18RR indicates that the structural member such as a post is vertical and that non-alignment of the indicator and marker indicates a non-vertical position. Applicant disagrees with the Examiner’s position that Wilson discloses an indicator 14 and marker 22/18RR that align with each other to indicate whether or not a structural member is vertical. Applicant respectfully submits that in the Wilson device **it is the indicator 14 alone** that

shows the user whether or not the device is leveled. The indicator 14 is a bubble level and when the bubble is centered in the indicator 14, then the user knows that the vehicle is level. The user does not need to attempt to line the bubble level up with any other component on the assembly. Once Wilson's device indicates (via the indicator 14) a level position, the user consults the components the Examiner refers to as the marker 18RR to tell him/her how much to adjust the height of each individual wheel of the vehicle. The Applicant's position is supported by Wilson's specification, as can be seen in column 4, lines 18-29, where the patent states:

*"Indicator assemblies (FIG. 1) 18LR, 18RR, 18LF, 18RF are located near each corner. These indicator assemblies 18LR, 18RR, 18LF, 18RF are representative of the four corners of the vehicle to be leveled. The user only has to place the leveling device 11 upon a counter or other surface that is parallel with the floor of the vehicle. The leveling device 11 being longitudinally aligned with the vehicle **upper housing 10 would be manipulated until the bubble is centered on circular level 14.** The individual indicators 18 would then indicate in numerals and the difference in the shading 50, 52 whether a particular wheel or corner was high or low and indicate the number of inches."*

(Emphasis added by Applicant)

Applicant respectfully submits that there is no need in Wilson's device to align any one component of the device with any other component of the device to indicate levelness - **that determination comes from reading the indicator 14 alone.** As such, Applicant respectfully submits that Wilson does not disclose the limitation of the claim requiring that the indicator and marker be aligned to indicate verticalness. Applicant therefore respectfully submits that Wilson does not disclose each and every element of the claimed invention arranged as in the claim and therefore does not anticipate claim 1 and consequently claims 7 and 8 of the instant application. Applicant therefore

respectfully requests that withdrawal of the rejection of claims 1, 7 and 8 as being anticipated by Wilson under 35 U.S.C. 102(b). Applicant has made a minor amendment to claim 1 in that the indicator has been defined positively instead of passively as was previously the case. This amendment is not made in response to the cited art but is made rather to define the invention more clearly. Applicant submits that claims 1, 7 and 8 are allowable and requests a notice to that effect.

The Examiner indicated that claims 2-6 and 9-22 were objected to as depending upon a rejected claim, but would be allowable if amended to include the base claim and any intervening claims. In response, Applicant has not amended claims 2-6 and 9-22 by including the limitations of the base claim and any intervening claims because of the arguments for allowability of claims 1, 7 and 8 as presented above. Applicant will, however, amend these claims in accordance with the Examiner's objection should the Examiner maintain the rejection of claims 1, 7 and 8 under 35 U.S.C. 102(b).

Applicant has included new claims 26-30 which are directed to the combination of the leveling assembly and a fence post. Applicant submits that these claims are allowable over the cited art because the combination of a leveling assembly and fence post is not disclosed or claimed in Wilson.


Applicant has made a minor amendment to claim 4 to more clearly define the nature of the indicator on the arm. Applicant has changed the dependency of claim 13 from "Claim 11" to "Claim 12" because the word "leg" in claim 13 lacked an antecedent without this amendment. Neither of these amendments has been made in response to the art cited by the Examiner.

Applicant requests reconsideration of claims 1, 7 and 8 and examination of new claims 26-30.

Should the Examiner believe that a telephone conversation will advance prosecution of this matter, they are invited to contact the undersigned at (330) 244-1174.

Respectfully submitted at Canton, Ohio this 3RD day of MAY, 2005.

SAND & SEBOLT


By: Joseph A. Sebolt
Reg. No. 35,352

Aegis Tower, Suite 1100
4940 Munson Street, NW
Canton, Ohio 44718-3615
Telephone: (330) 244-1174
Facsimile: (330) 244-1173
JAS/ff

Docket No. 1522006US1AP